

*****Atty Docket No:
53881.010100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: JOHNSON, Ronald F. M. : Examiner: FISHCHER, Andrew J.
Serial No.: 09/769,294 : Art Unit: 3627
Filing Date: January 26, 2001 : Confirmation Number: 4829

For: System and Methods for On-Line, Real-Time Inventory Display, Monitoring, and Control

DECLARATION OF ROY RUBIN UNDER 37 C.F.R. §1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

I, Roy Rubin declare and say as follows:

I am a citizen of Israel and reside at 2335 Bentley Ave. Los Angeles, CA 90064.

I have a Bachelor's degree in Business-Economics from the University of California at Los Angeles. Throughout my career, I was employed by Microsoft Inc. as a Systems analyst, where my responsibilities included system support. For the past 5 years, I have been the owner of Irubin Consulting, a Los Angeles based consulting firm. We are currently the largest Open Source Ecommerce development group in the USA. Our primary area of expertise is eCommerce development with a focus on the business processes. We have consulted clients on integration issues, fulfillment and inventory control/management, reverse logistics, and customer service. In my capacity as the Chief Technology Officer, I oversee the technology department and work with our many clients to streamline the business processes of their organization. In many occasions, I oversee the design and implementation of inventory management and control systems for a wide variety of companies, from small start-ups with relatively limited inventory management needs, to large distributors and suppliers with multiple warehouses. As a result of my

education and work experience, I am and have been familiar with the state of the art in inventory management and control systems.

I have read and understand U.S. Patent No. 6,341,271 to Salvo et al. ("Salvo"), U.S. Patent No. 5,712,989 to Johnson et al. ("Johnson"), U.S. Patent No. 6,324,522 to Peterson et al. ("Peterson"), as well as the specification and claims of U.S. Patent Application Serial No. 09/769,294 ("the Pending Application"). I understand that the Pending Application is entitled to a priority date of at least January 26, 2000.

Having reviewed Salvo, and as one familiar with the level of skill in the art as of the priority date of the Pending Application, Salvo cannot be seen as explicitly or inherently disclosing the storage of on-hand, reserved, and ordered inventory information, nor would storage of such information have been obvious to one of ordinary skill in the art as of the priority date. Most inventory databases in use at that time, and in fact most inventory databases in use today, simply track the number of items presently in stock, much like Salvo. Salvo teaches a system through which inventory levels are monitored in real-time, to prevent under and over ordering. However, if Salvo were to also track reserved and ordered inventory information, Salvo would have a better understanding of not only the instantaneous inventory levels, but also upcoming demand. Thus, tracking on-hand, reserved, and ordered inventory information is not inherent in Salvo.

Furthermore, based on my review of Salvo, one of ordinary skill in the art would not have been able to use the disclosure in Salvo to build a system such as that recited in the claims of the Pending Application without undue experimentation as of the priority date of the Pending Application. To enable one of ordinary skill in the art to build a system such as that recited in the claims of the Pending Application, Salvo would have to enable one of ordinary skill in the art to, in part, create a server that provides real-time access to inventory information stored in a database by pushing inventory information to at least one client, wherein the client can communicate with the server via wireless communications. Salvo's patent describes an inventory management system that monitors inventory amounts, provides information concerning inventory, and decides if an order for inventory replacement should be placed. The system includes a storage for

inventory, an indicator for monitoring and reporting the level of current inventory, and a controller for receiving information from different suppliers and for integrating such information with information on current inventory amounts and estimated future use. Salvo does not teach or suggest pushing inventory information to a client.

While Salvo does teach a system that monitors inventory levels in real-time, Salvo does not teach providing real-time access to the inventory information, nor would one of ordinary skill in the art be motivated to alter Salvo to provide such access. In fact, not only would one of ordinary skill in the art not be motivated to alter Salvo to provide real-time access to inventory information, Salvo actually teaches that such a system should be avoided. Salvo states that “plant management obtains the analyzed information in an end form, without seeing the raw data that has been analyzed. ... Accordingly, plant management does not see ... the processes used by the control unit to analyze the information, and merely obtains the analyzed information.” (Column 7, lines 27-37). This clearly teaches away from the purpose of the Pending Application and the claims contained therein, the claims being directed toward providing what Salvo would consider to be raw inventory information.

Having reviewed Johnson, and as one familiar with the level of skill in the art as of the priority date of the Pending Application, one of ordinary skill in the art would not have been able to use the disclosure in Johnson to build a system such as that recited in the claims of the Pending Application without undue experimentation as of the priority date of the Pending Application. To enable one of ordinary skill in the art to build a system such as that recited in the claims of the Pending Application, Johnson would have to enable one of ordinary skill in the art to, in part, create a server that provides real-time access to inventory information stored in a database by pushing inventory information to at least one client, wherein the client can communicate with the server via wireless communications. Johnson’s patent describes a requisition and inventory management system which employs both a host computer and a local computer which can be linked to provide two-way communications “in a real-time environment”. Johnson does not teach or suggest pushing inventory information to a client to enable real-time access to information stored in an inventory database. Thus, Johnson cannot be seen as enabling

one of ordinary skill in the art to practice the invention claimed in the Pending Application.

Having reviewed Peterson, and as one familiar with the level of skill in the art as of the priority date of the Pending Application, Peterson cannot be seen as either explicitly or inherently disclosing the storage of on-hand, reserved, and ordered inventory information, nor would storage of such information have been obvious to one of ordinary skill in the art as of the priority date of the Pending Application. Most inventory databases in use at that time, and in fact most inventory databases in use today, simply track the number of items presently in stock. Thus, tracking on-hand, reserved, and ordered inventory information is not present in Peterson.

Furthermore, based on my review of Peterson, one of ordinary skill in the art would not have been able to use the disclosure in Peterson to build a system such as that recited in the claims of the Pending Application without undue experimentation as of the priority date of the Pending Application. To enable one of ordinary skill in the art to build a system such as that recited in the claims of the Pending Application, Peterson would have to enable one of ordinary skill in the art to, in part, create a server that provides real-time access to inventory information stored in a database by pushing inventory information to at least one client, wherein the client can communicate with the server via wireless communications. Peterson's patent teaches:

"However, it is specifically contemplated, and within the scope of the invention, that such functions be replaced with a real time connection to the inventory control system that resides at the vendor's locality. For example, any queries generated by an end user would be relayed over a direct connection from the web server to the inventory control database residing at the vendor's locality. That database would then generate responses to the queries, which the web server would receive and display to the user via the browser interface. Any purchase orders submitted by the end user would then be relayed directly to the vendor's on-site inventory control database, making the necessary changes to order status and on hand inventory in real time. This real time functionality would then

replace any batch activities, such as uploading files to and downloading orders from the information network” [Column 43, lines 15-30; emphasis added]

While Peterson teaches a system for updating database information, Peterson does not teach or suggest providing access to inventory information stored in a database via push technology. Instead, Peterson explicitly relies on “pull technology” by only responding to queries sent by an end user.

Still further, Peterson actually teaches away from the dissemination of accurate, real-time inventory information as provided by the invention claimed in the Pending Application. Peterson teaches an electronic information network for inventory control and transfer, which includes a process for distributing items, especially industrial maintenance repair and ordering (MRO) parts and supplies. This is achieved by interconnecting a plurality of vendors via a network, and permitting the vendors to communicate to the other vendors the current inventory quantity and current price of each item the vendor has for sale. However, Peterson specifically teaches that “A vendor may, of course, underreport the total number of the item that the vendor possesses...” (Column 3, lines 43-47). The underreporting of the inventory levels as taught in Peterson clearly teaches away from the invention claimed in the Pending Application, because Peterson does not permit dissemination of accurate, real time inventory information.

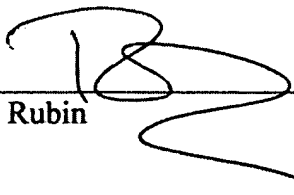
I wish to note that I am not related to the inventor of Pending Application, nor have I had any personal involvement in the development of the technology in the Pending Application. Furthermore, I have no legal or financial interest in Penndulum, Inc., or any other the company that has the license to commercialize the Pending Application.

The undersigned declares further that all statements made herein of his own knowledge are true and that all statement made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the application or any patents issuing thereon;



Further declarant saith not.

6/21/05
Date


Roy Rubin